

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 24-11-1995.

CRIMINAL APPEAL NO. 418 OF 1989

For Approval and Signature:

THE HON'BLE MR. JUSTICE H.R. SHELAT.

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether Their Lordships wish to see the fair copy of Judgment ?
4. Whether this case involves substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

Mr. S.R. Divetia, Addl. Public Prosecutor for the appellant.

Mr. I.M. Kapoor, Advocate for the respondent.

Coram: H.R. Shelat, J.

(24-11-1995)

ORAL JUDGMENT:

The respondent came to be convicted of the offence under Section 21(1)(4)(c) and Section 92 of the Factories Act, and sentenced to a fine of Rs.250/- in default simple imprisonment for 25 days more by the then learned Judicial Magistrate, First Class at Veraval delivering the judgment on 25th May 1989 in Criminal Case No. 184 of 1989 with the result the State has preferred the appeal for enhancement of the sentence.

2. In brief, it is the case of the prosecution that the respondent accused is the Manager and In-charge of the affairs of the factory named and styled "B.M.G. Fisheries" at Veraval. On 4th November 1988 Devsi Ramji one of the workers while discharging his duties sustained serious injuries because necessary safeguards around the machine were not provided and that worker was put to hazards owing to unguarded part of the

machinery. Because of the injuries the right hand of the worker has been cut off, and he will have now to pull on with amputation which would hamper him all through out his life in attending his daily routine. The Factory Inspector having come to know about it prepared necessary papers and then lodged the complaint against the respondent before the learned Judicial Magistrate, First Class at Veraval. A plea was taken and respondent pleaded guilty. Hence the learned Magistrate held him guilty accepting his plea made voluntarily and sentenced him aforesaid. The prosecution found that a lenient view was taken. Looking to the gravity of the offence and liability of the entrepreneur harsh punishment ought to have been inflicted and the respondent ought not to have been let off by such a ridiculous punishment and therefore the present appeal has been filed.

3. Mr. Divetia, the learned Additional Public Prosecutor representing the appellant submitted that when a very lenient view is taken by the learned Magistrate below without there being any mitigating circumstance this Court might heavily come down upon the respondent looking to the gravity of the offence, and enhance the sentence which would be commensurating with the gravity of the offence. Mr. Kapoor, the learned Advocate representing the respondent with full vigour submitted that it was not just and proper on the part of the prosecution to prefer the appeal and pray for enhancement when once under a particular belief ofcourse having regard to the then prevailing circumstances the respondent pleaded guilty. The prosecution better may abstain from taking advantage of the plea once made by the respondent admitting the guilt.

4. I see great force in the submission made by Mr. Kapoor. A similar question arose in the case of Thippeswamy vs. State of Karnataka-AIR 1983 Supreme Court 747 before the Apex Court and while dealing with the question, it has been held "Where by reason of plea bargaining the accused pleaded guilty and was convicted and sentenced by Magistrate acting upon his plea of guilty, the enhancement of sentence by the appellate or revisional Court in appeal or revision by acting on plea of guilty would not be reasonable, fair and just. It would be clearly violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly, and then in appeal or revision, to enhance the sentence. The Court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused and remand the case to the trial Court so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper sentence can be passed against him". In view of this decision, it would not be just and proper on the part of the prosecution to press for enhancement. It would be better if the matter is remanded back for fresh trial so that the respondent and prosecution both may have ample opportunity to

submit their respective case and have the result on merits. In view of such law made clear by the Apex Court, in this case, the judgement and order, convicting the appellant will have to be reversed and the matter will have to be sent back for fresh trial. The appeal therefore will have to be dismissed, but order of remand has to be passed. In the result, the appeal is dismissed. However, the judgment and order passed convicting and sentencing the respondent are reversed and the matter is ordered to be sent back to the lower Court for hearing and disposal afresh. The learned Magistrate below shall give reasonable opportunities to both and hearing both the parties shall decide the case in accordance with law. The parties to appear before the lower Court on 12th December. 1995.

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